

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 BACKFIT APPEAL MEETING WITH
5 MAINE YANKEE

6 ***

7
8 U.S. Nuclear Regulatory Commission
9 One White Flint North, Rm. 4B-6
10 11555 Rockville Pike
11 Rockville, MD 20852-2738
12

13 Friday, July 10, 1998
14

15 The above-entitled meeting commenced, pursuant to notice, at
16 1:00 p.m.
17

18 PARTICIPANTS:

19 JOHN ZWOLINSKI, Chairman
20 FRANK CONGEL
21 GUS LAINAS
22 MICHAEL WEBB, Maine Yankee Project Manager
23 DON DAVIS, CYAPCO & YAEC
24 DUKE WHEELER, NRC/NRR/DRPM
25 JOE GRAY, OGC

PARTICIPANTS: [Continued]

DAN BARSS, NRC/NRR
STEVE CROCKETT, NRC/DCMEXM
J. E. BEALL, NRA OCM/EM

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1 R. E. BEEDLE, NEI
2 ALAN NELSON, NEI
3 TOM HARRISON, McGraw Hill
4 TONY PIETRANGELO, NEI
5 ALAN CHAPPEL, NEI
6 ELLEN GINSBERG, NEI
7 LYNNETTE HENDRICK, NEI
8 GEORGE ZINKE, Maine Yankee
9 MIKE MEISNER, Maine Yankee
10 ROGER DAVIS, NRC/OCM/NJD
11 RALPH CARUSO, NRC/NRR
12 SECURITY WEISS, NRC/NRR
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P R O C E E D I N G S

[1:05 p.m.]

MR. WEBB: Good afternoon. I would like to welcome everybody to our NRC headquarters. My name is Michael Webb and I'm the project manager at NRC for Maine Yankee.

This session this afternoon has been noticed as a meeting between the NRC staff and members of the Maine Yankee Atomic Power Company staff. As stated in the June 30th, 1998 meeting notice, the purpose of the meeting is to provide Maine Yankee the opportunity to discuss its appeal of an NRC backfit determination regarding a Maine Yankee Emergency Preparedness exemption request.

Before we start the meeting I would like everybody in the room to introduce themselves, beginning with the NRC backfit review panel chairman.

CHAIRMAN ZWOLINSKI: I'm John Zwolinski, the acting director for the Division of Reactor Project East.

MR. CONGEL: I'm Frank Congel, I'm the director of the incident response division.

MR. LAINAS: I'm Gus Lainas, I'm acting director division of engineering.

MR. WEISS: Sy Weiss, I'm project director for non-power reactors and decommissioning.

MR. BEEDLE: Ralph Beedle, NEI.

MR. DAVID: Don Davis, Connecticut Yankee, Yankee Atomic.

MR. GRAY: Joe Gray with General Counsel's Office, NRC>

MR. WHEELER: Duke Wheeler, NRC.

MR. BEALL: Jim Beall, Commissioner -- Office.

MR. CROCKETT: Steve Crockett, Commissioner -- Office.

MR. BARSS: Dan Barss, Emergency Preparedness Specialist in

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1 NRR.

2 MR. NELSON: Alan Nelson, NEI.

3 MR. HARRISON: Tom Harrison, McGraw Hill.

4 MR. PIETRANGELO: Tony Pietrangelo, NEI.

5 MR. CHAPPLE: Alan Chapple, NEI.

6 MS. GINSBERG: Ellen Ginsberg, NEI.

7 MS. HENDRICH: Lynn Hendrich, NEI.

8 MR. ZINKE: I'm George Zinke, I'm the director of Regulatory
9 Affairs at Maine Yankee.

10 MR. MEISNER: And Mike Meisner, Maine Yankee.

11 MR. WEBB: To afford members of the public who may not have
12 been able to make it here today an opportunity to review the
13 proceedings, this meeting is being transcribed and the transcription
14 will be made publicly available. It will automatically be provided to
15 Maine Yankee and its associated service list, but if you would like to
16 receive a copy of the transcript, please provide your name and address
17 on one of the sign-up sheets that I hope we're circulating about the
18 room.

19 The meeting is open for public observation and at its
20 conclusion members of the public will be provided the opportunity to
21 make statements on this topic that will be included as part of the
22 transcript.

23 At this point are there any questions of an administrative
24 nature that I can answer?

25 [No response.]

MR. WEBB: With that, I would like to now pass the floor to
the NEC -- sorry, to the NRC Backfit Review Panel and John Zwolinski.

CHAIRMAN ZWOLINSKI: On June 9, Frank Congel, Gus Lainas,
and myself were appointed to serve as a backfit review panel. The

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1 licensee in their letter of May 6th, 1998 in which the subject was
2 appeal of NRC determination concerning Maine Yankee Atomic Power Company
3 claim of backfit regarding beyond design basis accidents in spent fuel
4 pool requested that this matter be addressed outside the Office of
5 Nuclear Reactor Regulation.

6 However, in a letter dated June 25, 1998, the EDO informed
7 Maine Yankee that this issue had been forwarded to the Office of Nuclear
8 Reactor Regulation. The resulting action was to appoint this panel with
9 the specific charter of recommending to the office director whether or
10 not the criteria being used by the staff in evaluating a Maine Yankee
11 request for relief from off-site emergency preparedness requirements of
12 10 CFR 50.54(q) constitute a backfit.

13 The panel following the guidance of Office Letter 901 has
14 undertaken the review of correspondence between the staff and licensee
15 and has met with the staff to gain a much better understanding of the
16 staff's efforts today.

17 The next step is to hear from you, Maine Yankee, regarding
18 this appeal. Following this meeting the panel will provide the results
19 of our deliberations to the office director.

20 As a panel we believe it is very important for you to be --
21 for you to focus on specific positions you hold providing context and
22 basis as appropriate. Be assured that the panel will not be hesitant to
23 ask questions.

24 I trust you all are aware that the three of us have not been
25 involved in activities associated with Maine Yankee for a considerable
period of time, and certainly have not been involved in the review of
your exemption request. With this brief overview, I will turn the
meeting over to you, Mr. Meisner.

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MR. MEISNER: Thank you, appreciate it.

1 [Slide shown.]

2 MR. MEISNER: We are going to cover several things today.

3 Is this microphone on? Can you hear okay?

4 I think while we're all probably familiar with the zirc fire
5 issues themselves, I think the staff's denial introduced some much more
6 fundamental and generic issues and I think we need to talk about that.
7 And as you indicated, John, there's a context to all of this and I'd
8 like to spend a little time making some backfit rule observations
9 independent of just the zirc fire analysis issue itself. And then, of
10 course, we need to deal with the zirc fire issue and specifically
11 address the NRC's backfit denial letter and their basis and provide our
12 rebuttal to that.

13 And then when the Maine Yankee portion is done, NEI would
14 like to provide some discussion with an industry viewpoint of how they
15 feel the backfit rule should or should not be applied in this case. And
16 Don Davis with Connecticut Yankee would have some remarks as well.

17 In case you don't know, Connecticut Yankee is in a very
18 similar situation to Maine Yankee as far as the length of time the plant
19 has been shut down and the applicability of a zirc fire analysis to that
20 facility.

21 [Slide shown.]

22 MR. MEISNER: So I think there are some fundamental issues
23 that we need to talk about and the first one that's on the list here is
24 really one that I would like to dispose of and not really address much
25 from here on out.

As you all know, our original submittal raised the concern
that some members of the NRC felt that the backfit rule did not apply to
decommissioning plants. We strongly oppose that position and we are
assuming that since we're now going through the backfit process and the

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1 backfit appeal process that that's not a concern for the instant issue
2 with Maine Yankee and the zirc fire. And that the panel deliberations
3 will be conducted and whichever way the panel decides on this issue is
4 how NRR will go as opposed to bringing newly, at a late date, the idea
5 that the backfit rule doesn't apply to decommissioning plants.

6 CHAIRMAN ZWOLINSKI: If I can interject, I think the fact
7 that the panel exists a priori for this issue in and of itself I think
8 the agency is choosing to say it does apply. I think there's a broader
9 or bigger issue that we're not going to address in our deliberations.

10 MR. MEISNER: Okay. Good. And I agree with that.

11 CHAIRMAN ZWOLINSKI: Okay. You may have just said that, I
12 wanted to sharpen it just a little bit.

13 MR. MEISNER: And, as usual, you said it better than I did.

14 John and I have some history of some turbulent times, I
15 guess.

16 While Maine Yankee felt that the zirc fire analysis
17 requiring that for emergency plan relief was itself a backfit with the
18 staff's denial of our backfit request we suddenly have an entirely new
19 issue. And we're going to talk about that to some extent here. No
20 longer is the issue zirc fire. I think it's fair to say that the staff
21 has never objected that imposing this on Maine Yankee was a new staff
22 position which is a critical element of the backfit rule, nor did the
23 staff's denial letter really address anything technically at all to do
24 with zirc fire or emergency planning. And while I'm happy to see the
25 emergency planning reviewer here, and while we will be going through
some background discussions on our position on zirc fire, the real issue
today comes down to the staff's position on denial and their position is
-- and I'm paraphrasing it here is that licensee initiated actions don't
have the protection of the backfit rule. That's a very broad and

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1 generic finding on the part of the staff and it goes well beyond
2 applicability to decommissioning plants or the zirc fire analysis and
3 attempts to affect a great deal of the activity that the nuclear
4 industry is involved in today. And I'd like to address that to some
5 degree.

6 And whether that licensee-initiated action is voluntary or
7 involuntary, the staff went on further to say that voluntary actions on
8 the part of licensees also did not enjoy the protection of the backfit
9 rule. And we need to explore that issue as well as whether or not the
10 emergency plan exemption requests that Maine Yankee requested are in
11 fact voluntary. And I think we'll find that they're not.

12 So those are the key issues we intend to focus on today
13 based on the staff's denial letter.

14 [Slide shown.]

15 MR. MEISNER: But before we get into that, I do want to put
16 some -- place some context to the backfit rule and give you some
17 personal observations. And please recognize that while I say things
18 like "typical industry viewpoint" on here, these really are personal
19 based on talking to individuals throughout the industry and they don't
20 reflect a formal industry position as such.

21 But this part I found so important and I don't usually do
22 that except for the most recent meeting that you and I were in, I've
23 written this down and I'd like to go through it and read you the
24 observations I have in this area.

25 So when you get right down to it, the backfit rule is the
only protection the industry has against turning staff opinion into
requirement. But that protection is seldom exercised by the industry.

And when you ask around and you ask, why don't you take more
advantage of the backfit rule, in some cases you'll get a response that

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1 we fear retaliation. But, you know, the more predominant reason and the
2 overriding reason in the minds of the people that I talked to is that
3 the backfit rule is viewed as toothless. It's an afterthought. And,
4 again, this is the view of people in the industry. This is perception
5 that I'm trying to relate to you. It's used as an afterthought that the
6 staff develops a position they'd like to impose on a licensee and then
7 rather than identify that position as a new staff position and follow
8 the backfit process, they search for creative ways to avoid the backfit
9 process.

10 Our view is that the staff often asks, why don't I have to
11 consider backfit rather than asking, is this a backfit, which is an
12 entirely different question. And personally I've dealt with enough of
13 these backfit issues in my career and in doing that have gotten a lot of
14 feedback from NRC staff. Enough feedback to know that when the staff
15 goes to OGC, for instance, for help on a potential backfit issue, the
16 OGC doesn't always respond by making a determination -- a firm
17 determination this is or is not a backfit, rather OGC will at times ask
18 the staffer whether or not they want it to be a backfit and will support
19 either position.

20 That's not the way the process is intended to work in my
21 view. And it leads to creative lawyering rather than a disciplined
22 process of backfit review.

23 In any case, we believe that in general the NRC does not
24 comply with the spirit of the backfit rule in two respects. First the
25 staff's backfit guidance requires all -- all NRC personnel to review new
staff positions and identify backfits.

I think it would be an interesting exercise to pull together
a group of project managers and reviewers and ask them how many backfits
they've identified in the last year. I suspect you'll find none. And

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1 furthermore, I suspect you'll find that few consider it to be their
2 responsibility at all.

3 The second area we believe the staff does not comply with
4 the spirit of the backfit rule is when on a few occasions a licensee
5 does raise a backfit concern. In a great majority of those cases, as I
6 said earlier, our impression is that the creative lawyering takes over
7 and the true issue is really overlooked.

8 In all this and I'm dealing with perceptions by the industry
9 again, all this leads to empathy on the part of the industry as far as
10 the backfit rule is concerned. And I think it's particularly telling
11 about the industry's confidence in the backfit rule that as far as we
12 know this Maine Yankee Backfit Appeal Meeting is the first conducted in
13 the last six years.

14 And the reason is not because of the sparsity of backfits.
15 The reality is that backfits occur frequently, but they're not dealt
16 with as such by the staff. And I'll give a couple of examples in the
17 rulemaking area as well as some recent experiences of other backfits at
18 Maine Yankee.

19 There is a proposed rulemaking out for comment. It's titled
20 "Miscellaneous Changes to the Licensing Requirements for Independent
21 Storage of Spent Fuel". Part 72 ISFSI rule changes. And these really
22 are miscellaneous. It's to -- it's to make various changes in the Part
23 72 rules and fix them up where they were in some cases incorrect or
24 clarify them.

25 And in Part 72, you know, just like 50.109, the backfit rule
-- there's a backfit rule and it prevents additional elimination or
modification of procedures or organization required to operate an IFSFI.

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Now, if you look at this closely, there are two areas where
in these miscellaneous changes the staff clearly levies new requirements

1 that would necessitate on the part of the licensees that they make
2 procedure changes in order to comply. There is new recordkeeping and
3 new recording requirements. And the new reporting requirements, but the
4 way includes more than a page of detailed reporting areas that are now
5 -- or the staff is proposing to require for Part 72 licensees.

6 Yet, you know, kind of defying all logic, the conclusion in
7 the backfit analysis for the proposed rulemaking says, the NRC has
8 determined that the backfit rule, in this case 10 CFR 72.62 does not
9 apply to this rule because these amendments do not involve any
10 provisions that would impose backfits, in other words, any changes to
11 licensee procedures or organization.

12 There's another example of a proposed rulemaking that's out
13 for comment now and I'm not as intimately familiar with it as George is
14 and I'd ask him to just describe it for you.

15 MR. ZINKE: There's a proposed rulemaking that deals with an
16 IEEE -- I believe it's 603 standard that deals with instrumentation.
17 And the gist of the rulemaking is that for plants -- for new plants or
18 for existing plants that do a major change out of certain important to
19 safety instrumentation systems that the new standards of the IEEE would
20 then apply. And it would apply to plants that are making this type of a
21 major design change under 50.59. The gist of the backfit analysis was
22 that since design changes like this kind of a major replacement of an
23 instrumentation system, since that type of design change is voluntary,
24 that the backfit rule doesn't apply. So the gist is then that a
25 licensee making allowed changes under 50.59 that the backfit rule
doesn't apply and the Commission can impose new requirements.

MR. MEISNER: And that's very similar to the staff's basis
for denial in that voluntary or even just licensee-initiated activities
fall out from under the protection of the backfit rule. But let me give

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1 you some substantive examples from Maine Yankee in just the last nine
2 months as we're proceeding into decommissioning.

3 There are defuel technical specifications. In reviewing the
4 defuel technical specification submittal from Maine Yankee, the staff,
5 in my view, really should have relied upon the improved tech spec
6 program. After all, spent fuel pool safety is equally applicable to
7 operating plants. In fact, more so in that the spent fuel pool
8 accidents are more consequential for operating facilities because of the
9 shorter spent fuel decay time compared to a plant that's been shut down
10 for quite some time.

11 I think most of you know a lot of effort went into the
12 improved tech spec program. And I know personally as one of the
13 original industry architects of the program and George as well, as very
14 early implementers of that program at Grand Gulf they were familiar with
15 the excruciating difficulty the industry and staff went through to reach
16 agreement on improved tech specs. It was years and years of hard work.
17 All the technical issues associated with spent fuel pools were
18 considered in that process. And a determination was made as to whether
19 the -- whether particular parameters or programs should be included in
20 the improved tech specs.

21 However, for reasons that have never been justified under a
22 backfit safety basis, for Maine Yankee and for other currently
23 decommissioning plants, the decommissioning branch staff is requiring
24 program controls and tech specs for chemistry cold weather protection
25 and other things as well as a fuel pool temperature tech spec that was
rejected during the improved tech spec review.

 I have to say I'm somewhat ashamed to say that at Maine
Yankee we caved to the pressure. And it's really that old -- remember
when a lot of plants were getting licensed, the pre-licensing issue of,

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1 if you want to get your review approved in a timely fashion, then you
2 really need to voluntarily sign up for what the staff wants. In our
3 case, our defuel tech specs were sitting on a manager's desk pending his
4 concerns about adding these various things to the tech specs with the
5 implication that it might not move off his desk until we agree.

6 So with time pressures and with the NRC's approval actually
7 becoming critical path for our decommissioning, we reluctantly proposed
8 the changes on our own and they were added to our defuel tech specs and
9 approved.

10 Now, if I was another plant, if I had the luxury of some
11 time, I would never have allowed that. It's clear backfit, in my mind,
12 and I think most people's minds. It shouldn't happen like that. But we
13 observed in that process no inclination on the part of the staff to
14 fulfill their primary responsibility under backfit guidance to identify
15 and deal with backfits.

16 Let me give you a few examples in the security plan
17 exemption area. First, last spring we were informed by our project
18 manager that the security branch would require that in addition to
19 pursuing the exemption process, after approval of the exemption, we
20 would need to then submit a license amendment request for the same
21 changes. Now, that's not a trivial process, you know, as far as time,
22 notice under SHALI as well as the potential for a hearing.

23 Now, we know that many security exemptions have been issued,
24 and none to our knowledge ever required dual processing as exemptions
25 followed by license amendments. Again, this is a clear backfit in our
mind. That requires us to alter our processes and how we provide
proposed changes to the NRC.

Now, in this case we pushed back and over a period of
several fairly contentious phone calls and internal staff meetings we

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1 eventually won the point. But we were unnecessarily, I think, put into
2 a very uncomfortable position of having to challenge a staff position
3 which had absolutely no basis not precedent. And as you know, you do
4 that enough and we've done that a lot in the Maine Yankee
5 decommissioning, you start to develop an adverse reputation with the
6 staff. That's not fair to put us in that position. The staff should
7 really be policing itself with respect to new staff positions and then
8 when new staff positions come up, identify them as backfits and deal
9 with them as such.

10 Now, staying in the security program area, a couple of weeks
11 ago Maine Yankee received approval for various security program
12 exemptions. We also received disapproval for some. And in documenting
13 their disapproval the staff introduced new staff position, in other
14 words, backfits, that were unsupported by regulation. And I want to
15 briefly cover a couple of them. This is in the SER the staff issued on
16 June 29th.

17 One of the exemption requests we had in had to do with the
18 vehicle barrier or vehicle threat requirement. We had asked for
19 exemption to the regulation to have a vehicle barrier. And in denying
20 the letter or in denying the request the staff also noted that until the
21 Commission has determined how much damage an explosive-laden vessel or
22 vehicle could cause to the spent fuel, the vehicle barriers must remain
23 in place. That's nowhere in the regulation, that's nowhere in the
24 guidance documents that I'm aware of as far as the Commission having to
25 determine themselves how much damage this explosive-laden vehicle could
propose to the spent fuel. In fact, the real process is licensee do
those analyses and determine whether they're in compliance or out of
compliance with the regulations and the staff comes in and reviews those
analyses.

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1 A similar example is we had asked for an exemption from the
2 requirement to maintain an isolation zone adjacent to the protected area
3 barrier. You know, this is a -- I don't know what, a 10-foot -- I've
4 forgotten the distance -- zone to look for intruders. And in part, in
5 denying the request the staff noted that an external isolation zone is
6 required at defueled reactor sites. Again, there is nothing in the
7 regulations about that.

8 The staff is adding a new interpretation onto a regulation
9 as part of a disapproval process and as a result trying to bind our
10 hands and in this case impose new requirements on the licensee. And
11 there are other examples that I'll be happy to share with you. But the
12 point is that backfits, unlike what you may have believed, are routine
13 and really not noticed by the staff. And I dare say that on the
14 security examples I mentioned that it probably never even occurred to
15 the staff the question of this new staff position was a backfit. I'd be
16 very surprised if anybody even raised the question.

17 So, I know this was kind of an extended introduction, but I
18 thought it important to provide a context and an understanding that the
19 zirc fire analysis that we'll be talking about and the staff's basis for
20 denial of that original backfit request is not at all unique. It goes
21 on all the time. And I wonder if there might not be a general problem
22 in the staff where they really don't take backfit as a matter of
23 responsibility and instead look at it as something to work around or
24 something I add on later at the end to deal with, you know, when I'm
25 finished with everything else. And I ask you as a panel to consider
that and take a look at it. And we -- and I think many people I know in
the industry can provide any number of other examples like that.

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MR. LAINAS: Yeah, excuse me, Mr. Meisner, those examples
that you gave, did you claim backfit? Did industry claim backfit on it?

1 MR. MEISNER: You mean like for instance the security
2 examples?

3 MR. LAINAS: Yeah, as an example.

4 MR. MEISNER: Yeah, and we just got those a week and a half
5 ago. And we did respond back to the staff and we have implemented
6 activities contrary to those staff positions and we noted in our 50.54p
7 evaluation that in fact the staff really should look at those as new
8 staff positions and backfits.

9 MR. LAINAS: But is your point that the staff should have
10 caught it as a backfit?

11 MR. MEISNER: Yes.

12 MR. LAINAS: Or is there something wrong with the backfit
13 process as far as, you know, a licensee -- well, the case in point that
14 we're talking about now?

15 MR. MEISNER: Yeah, well, the first step in the backfit
16 process and it's real clear in the staff guidance is that every NRC
17 staff member is responsible for determining when they have new staff
18 positions whether or not they're backfits. And in that respect I don't
19 feel the staff really pays much attention to it.

20 MR. LAINAS: But with respect to the licensees our industry,
21 you know, following back the procedures is there a problem with that?
22 The staff doesn't pick it up, but industry pushes it, is there a problem
23 with that process?

24 MR. MEISNER: Yes. And I think what we'll be going through
25 here today is a very good example of that that -- that I believe -- and,
again, this is personal belief, that the staff does get involved in
creative lawyering to come up with reasons why not to apply the backfit
rule as opposed to simply moving through the process.

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CHAIRMAN ZWOLINSKI: In your remarks, though, you've covered

1 a lot of ground. For example, in the rulemaking arena, we have
2 processes internal to evaluate backfit through the committee review of
3 generic requirements, for example, long before a rulemaking takes place,
4 plus the advance notice of rulemaking, noticing, things of that sort
5 versus the example you just cited on security in which apparently the
6 exemption was denied or found not acceptable. Those are kind of two
7 different issues, but I think I hear you saying that backfit across the
8 board in those arenas is not working correctly. And I believe that.

9 MR. MEISNER: Yes.

10 CHAIRMAN ZWOLINSKI: Is that the short of it?

11 MR. MEISNER: One of the examples I gave you about increased
12 recordkeeping and reporting requirements --

13 CHAIRMAN ZWOLINSKI: Yes.

14 MR. MEISNER: -- in Part 72, I think any objective reader
15 would say those are clearly changes to licensee procedures that matched
16 right up with what the backfit rule was intended to protect against, yet
17 the staff concluded there is no backfit here, that in fact, they weren't
18 changing licensee procedures as a result.

19 And just to make clear, I don't want you to get the feeling
20 that those denied exemptions, that's fine. That's fair. There is no
21 problem with that. What we object to is having denied it then coming
22 back and imposing new additional requirements in that area that weren't
23 in the regulations. And that's the part that I felt was the backfit.

24 CHAIRMAN ZWOLINSKI: So in the example of security, for
25 example, just saying it's denied without going into a lot of this other
--

MR. MEISNER: That's fair, sure.

CHAIRMAN ZWOLINSKI: -- explanation is what you would expect
to have seen?

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1 MR. MEISNER: That's right.

2 CHAIRMAN ZWOLINSKI: I see.

3 MR. MEISNER: And having gone into more explanation that new
4 staff position being identified as such and going through the backfit
5 process.

6 CHAIRMAN ZWOLINSKI: What I'm trying to draw the linkage to,
7 and maybe you can help us is your introduction and how it will tie into
8 the specifics of the zirc fire and the criteria of the staff is being
9 used. So I'm trying to formulate in my own mind the nexus to getting to
10 what I believe the substance of the matter is.

11 MR. MEISNER: And I think the real nexus is that this is not
12 an isolated case.

13 CHAIRMAN ZWOLINSKI: Okay.

14 MR. MEISNER: That it occurs all the time and I wanted to
15 give you some feel from the point of view of the licensee that you
16 really shouldn't treat the zirc fire thing as a unique instance. There
17 may be a more general problem underlying that that needs to be looked
18 at.

19 CHAIRMAN ZWOLINSKI: Well, thank you for those remarks.

20 MR. MEISNER: Okay. So for a few minutes I would like to
21 turn it over to George Zinke and ask him to discuss some of the basics
22 in the zirc fire issue. Do you want to talk from there, George and I'll
23 put these up or --

24 MR. ZINKE: Let me trade places.

25 [Slide shown.]

MR. ZINKE: What I want to discuss briefly is not the basis
for appeal, but some background, the context that will allow you to
understand our basis a little bit better. I want to establish for you
the various new and evolving NRC positions that have -- that surround

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1 the zirc fire issue.

2 In the history of the zirc fire issue there's a lot of
3 documents that deal with this beyond design basis accident and the spent
4 fuel pools. But the NUREG 1353 in April '89 resolved the issue. Within
5 that NUREG and the evaluation they determined in the NUREG was that if
6 the NRC was to impose new requirements that they would be a backfit, but
7 there was an analysis included in the NUREG. Some important things that
8 were in the NUREG it established a generic 17 months at which point in
9 time the event of issue would no longer be possible. Within the NUREG
10 it concluded that there was insufficient reason to create new
11 requirements. Within the NUREG it did not credit the evacuation or any
12 EP actions in coming up with this conclusion.

13 Subsequent to that Rancho Seco in June '89 shut down. The
14 NRC approved their insurance exemption 588 days after shutdown. And the
15 E plan, 625 days after shutdown. In both of these approval, the issue
16 of zirc fire was not -- it was not an issue. It was not a basis for
17 either of those exemptions being granted.

18 CHAIRMAN ZWOLINSKI: Is your point that NUREG 1353 didn't
19 impose new requirements? NUREGs really can't, I guess --

20 MR. ZINKE: The NUREG concluded that there were not new
21 requirements that were justified at that point in time.

22 CHAIRMAN ZWOLINSKI: And then when you move to the issues of
23 Rancho Seco, nothing carried over from that NUREG?

24 MR. ZINKE: That's correct.

25 CHAIRMAN ZWOLINSKI: Is that what the point is going to be?

MR. ZINKE: Yes.

MR. MEISNER: I guess I would say that another way.

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Everything carried over from the NUREG because the conclusion of the
NUREG was that zirc fire was not an issue to be addressed.

1 MR. ZINKE: So the approval of Rancho Seco was consistent
2 with the NUREG. There were no new requirements associated with the ZIRC
3 fire that were necessary in order to prove those exemptions.

4 CHAIRMAN ZWOLINSKI: Was the NUREG from your review
5 developed for a specific stage of operation -- of plant operation that
6 is, construction, power operation, decommissioning, or power operation
7 or is silent?

8 MR. MEISNER: We've got an overhead to address that in a few
9 more.

10 CHAIRMAN ZWOLINSKI: Okay.

11 [Slide shown.]

12 MR. ZINKE: Again, Trojan, they were shut down in November
13 of '92. Their E plan exemption was granted 325 days. The Trojan
14 submittal, their E plan exemption was contingent on Zirc fire. The
15 staff asked them to perform an analysis and the conclusion was that, you
16 know, it could happen, but very low probability. And so based upon the
17 low probability of a seismic event, the staff approved the exemptions.

18 Now, again, this is very consistent with the NUREG in that
19 the NUREG concluded that the probability of the event was low enough
20 that there were no new requirements necessary. The part that wasn't --
21 that was new at that time is that Trojan was asked to do some kind of an
22 analysis.

23 MR. CONGEL: Excuse me, was the link made with the NUREG and
24 that conclusion for Trojan, or was it separately addressed as an item?

25 MR. ZINKE: The NUREG was mentioned as far as the issue, the
NUREG wasn't -- it wasn't decided that per the NUREG now this is
acceptable.

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MR. CONGEL: Okay. Thank you.

MR. ZINKE: Yankee Rowe --

1 CHAIRMAN ZWOLINSKI: But if I understand your point, on the
2 Trojan docket, apparently the staff said something about Zirc fire which
3 if I interpret Mr. Meisner's opening remarks, that would be essentially
4 the first time it had been imposed and that might be a backfit in and of
5 itself?

6 MR. ZINKE: Yes. That would be correct. Plus the point I'm
7 trying to make is -- as we'll see as I go through the next example, it
8 was a changed position.

9 CHAIRMAN ZWOLINSKI: Okay.

10 MR. ZINKE: It was something -- it was a different position
11 than the staff had applied to Rancho Seco.

12 CHAIRMAN ZWOLINSKI: Okay.

13 MR. ZINKE: Where Rancho Seco, no mention of Zirc fire,
14 Trojan and Zirc fire has now become an issue that the licensee needs to
15 address and the approval of the exemptions was based upon the
16 probability of the events. Not where the NUREG had concluded -- one of
17 the things the NUREG had concluded was the generic time to the issue is
18 not an issue which ends up about 520 days, 17 months.

19 CHAIRMAN ZWOLINSKI: Seventeen months, okay.

20 MR. ZINKE: And the Trojan E plan was approved 325 days
21 after shutdown. So it wasn't on the basis that it can't happen, or that
22 certain temperatures could not be exceeded.

23 Yankee Rowe was shut down 11/91, their E plan exemption was
24 granted 10/92. With regard to their E plan exemption there was no issue
25 with Zirc fire. That was not a basis for approval of the E plan
exemptions. Their insurance exemption approved 4/93 did credit the Zirc
fire issue that it was a basis for the approval of the exemptions.

26 The acceptance criteria for the insurance was based upon
27 having gone past the generic time period of 17 months. So in this case

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1 for the E plan no mention of Zirc fire, insurance Zirc fire plays a
2 role, but the acceptance criteria is now based upon the generic 17
3 months.

4 [Slide shown.]

5 MR. ZINKE: For Maine Yankee, and I want to emphasize that
6 as we compare these plants relative to the fuel pool and relative to the
7 event described in the NUREG, Maine Yankee design is not unique. So
8 there isn't anything special about the Maine Yankee fuel or racks or
9 fuel pool design that would all of a sudden say, well, now is Maine
10 Yankee different than everybody else that has come along?

11 We shut down in December '96, requested E plan exemption in
12 November of '97. We did perform analysis which indicated -- our
13 analysis indicated that the Zirc fire event was no longer possible as of
14 January 16th. We then submitted our insurance exemption request on the
15 20th of January. On the May 6th, the generic wait period or the generic
16 17 months, we exceeded that timeframe which brings us up to today that,
17 you know, we're still waiting on approvals of both the E plan and the
18 insurance exemption and the acceptance criteria for what we're being
19 reviewed against isn't real clear, which I'm going to go into in a
20 little bit more detail.

21 CHAIRMAN ZWOLINSKI: I sense you're trying to draw a
22 parallel between this January 20th, 1998 submittal and the submittal
23 that Yankee Rowe made with respect to insurance?

24 MR. ZINKE: Yeah, and the --

25 CHAIRMAN ZWOLINSKI: And the criteria used to apparently
grant that insurance exemption?

MR. ZINKE: Right. There's been -- in the regulatory arena,
ANN there's two issues that have been tied -- so far that have been tied to
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ASS the Zirc fire issue. One is the E plan exemptions, and one is insurance

1 exemptions. There's been proposed rulemaking on the insurance which
2 ties acceptance criteria to Zirc fire analysis and exceeding certain
3 degrees. So that was the -- that rulemaking now, you know, it's still
4 not final, but we used that as our best understanding of the staff's
5 wishes relative to Zirc fire when we did our analysis. And those degree
6 numbers were consistent with the NUREG that described the Zirc fire
7 event.

8 CHAIRMAN ZWOLINSKI: Do I interpret that you believe the
9 staff has changed acceptance criteria and approval criteria from Yankee
10 Rowe to Maine Yankee on insurance?

11 MR. ZINKE: Yes. For Yankee Rowe the issue were not the
12 temperature, it was the timeframe past.

13 CHAIRMAN ZWOLINSKI: Okay. And thus today that review is
14 underway on insurance? This is the insurance?

15 MR. ZINKE: Yes, both the insurance and the E plan reviews
16 are still under way for Maine Yankee.

17 CHAIRMAN ZWOLINSKI: Okay.

18 MR. LAINAS: Suppose -- you indicated on January 16th that
19 you submitted an analysis that showed that Zirc fire was no longer
20 possible?

21 MR. ZINKE: Our analysis as performed showed that that was
22 the date that it was no longer. We actually submitted the analysis to
23 the staff later than that.

24 MR. LAINAS: Well, suppose it was approved. Suppose the
25 exemption was approved.

MR. ZINKE: Okay.

MR. LAINAS: Would that have made the backfit moot?

MR. ZINKE: It would still have been a backfit.

MR. LAINAS: It still pursued the backfit?

1 MR. MEISNER: Yes.

2 MR. ZINKE: Yes. It doesn't change the fact that it's a
3 backfit. It changes to what benefit we get as to pursuing it.

4 MR. MEISNER: Let me make something more clear. We, on our
5 own initiative, did this analysis and we did it as a matter of
6 expediency because at that time the staff was starting to tell us
7 verbally that it would be a condition of their approval. Delaying these
8 approvals makes a big difference to decommissioning plants. I'll get
9 into that in a bit. It's very costly particularly when there's no
10 safety benefit associated with it. So we started on a parallel path
11 both the backfit approach and the analysis approach to try to satisfy
12 the staff -- and that -- unsuccessful in the new approach and I'll talk
13 more about that later. We didn't do that because we felt that was a
14 regulatory requirement. It was strictly an expediency for us to proceed
15 with our decommissioning.

16 MR. ZINKE: What I've just gone over in history is to
17 emphasize that as we look at the dockets of the various plants that have
18 been shut down that the staff position as to what is acceptable with
19 regard to the Zirc fire issue has been changing. Changed from Rancho
20 Seco to Trojan, Yankee Rowe, Maine Yankee, and we're in the batch with
21 also Connecticut Yankee now. So the position has changed. When Maine
22 Yankee was licensed and with our E plan and the changes subsequent to
23 initial licensing the Zirc fire as an issue has never been part of our
24 license basis. It has never been mentioned as forming the basis for any
25 requirement that we have including E plan and insurance. So this is not
an issue that has always been there. It is an issue that was new.

ANN As I've just said, you know, it was associated with a
RIL generic issue 82 which, as far as we knew, and as far as all the
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ASS documentation we can find is closed as being resolved with no new

1 requirements.

2 CHAIRMAN ZWOLINSKI: But you would grant that the staff can
3 develop new positions and promulgate those based on operating plant
4 performance, foreign reactor performance, I think Barsobek is a very
5 good example. It's a suction strainer issue with boilers and the
6 retrofit of a suction strainer to ensure that you don't clog your ACCS
7 pumps.

8 MR. ZINKE: Absolutely.

9 CHAIRMAN ZWOLINSKI: And that would be a new staff position
10 imposed on the industry so as we garner additional experience as a staff
11 there are examples where there seems to be safety payback to impose
12 that.

13 MR. ZINKE: Absolutely. And in fact, that is -- I mean,
14 that is our point in that in the staff there are new positions. And
15 there's justified positions and that's why the backfit rule is so
16 important so that we don't spend our resources on those new things that
17 don't provide the safety benefit.

18 MR. MEISNER: The whole purpose of the backfit rule in our
19 minds that it provides that test. It tells you, is this safety
20 significant or not? And furthermore, if it's safety significant is the
21 amount of safety benefit you're going to get out of it proportional to
22 the costs? It's a process that we've had around for years, it served us
23 well. In this case the staff never applied it. And backfits are
24 appropriate -- any safety significant thing like Barsobek that it needs
25 to be considered. And I think the industry is getting much better about
stepping up to the bar and dealing with those issues.

What we object to are issues that don't raise to any level
of safety significance and evaluated and probabilities of ten to the
minus six. And more so that the staff has already done their backfit

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1 evaluation on through generic issue 82. That's the problem.

2 CHAIRMAN ZWOLINSKI: That example may be unfair because it's
3 a high profile issue in which there's a lot of interest, the Barsobek
4 issue. In other words, a lot of people are aware, whereas something
5 like this may not be quite the same profile to senior management or what
6 have you, so how does the staff actually handle it? And I think I'm
7 hearing essentially from your perspective you don't see the process
8 being overlaid to issues that maybe are not as visible as some other
9 safety concerns that arise.

10 MR. MEISNER: That's right. Yes.

11 MR. LAINAS: But the backfit that you're claiming is that
12 the issue should never have been asked, it should never have been
13 raised. Not as to whether Zirc fires, you know, whether the plant is
14 acceptable, you know, whether the -- your analysis is acceptable, that's
15 not at issue here. The question is we shouldn't -- it shouldn't have
16 been raised at first. All right.

17 I mean, you may argue that it's a low probability -- you may
18 argue it's a low probability, you know, and the way you analyze, it
19 shows acceptance and all that. That can be -- you know, you can -- we
20 can continue dialogue on that, but that's not your basis. I mean, your
21 basis is it should have been never raised in the first place.

22 MR. MEISNER: Right. And because the staff has already
23 analyzed it, this isn't an unanalyzed event. Generic issue 82 was
24 proposed solely for this purpose to determine whether additional
25 requirements are needed in the spent fuel pools from a safety point of
view. And Zirc fire was one of the issues that was addressed in
resolving that generic issue. And the entire generic issue resolution
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was that there are no additional requirements that meet the backfit rule,
in other words, that are cost beneficial and will provide a safety

1 payback proportional to the cost of the --

2 MR. LAINAS: I could look at that as resolution of the
3 issue, not whether it was asked in the first place. Maybe I'm getting
4 too fine on the cut here.

5 MR. MEISNER: Well, the practical effect on us is when we
6 submitted our request for exemption to the emergency client, it's fine
7 for the staff to ask the question. And had it been asked as a question,
8 and I'll get into this again more, we since August, a few weeks after we
9 shut down Maine Yankee, have been looking to get our arms around this
10 and determine for ourselves whether it was a safety significant issue
11 regardless of what the NRC requirements were. And had the staff simply
12 asked, well, you know, give us your evaluation of it and a best estimate
13 approach, we would have done that. In fact, we did it anyway. You
14 know, we --

15 MR. LAINAS: Right.

16 MR. MEISNER: -- but to take the next step and say, as a
17 condition of a our approval we have to do -- you not only have to do an
18 analysis that meets our acceptance criteria, but we, the staff, have to
19 do an analysis using an invalidated code and you're going to have to
20 wait until we get up to speed on this and let a contract and come up
21 with acceptable results even though it's clear to everybody, I think, at
22 this point that we're well beyond any time period the adverse event
23 could occur. That is a fact. That really kills us on our
24 decommissioning decision.

25 MR. LAINAS: You see, that's why I asked the question. If
 we granted the exemption, does the backfit go away? And the answer I
 got was no.

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 MR. ZINKE: That's correct.

 MR. LAINAS: Implying to me that the backfit is you should

1 have never asked the question in the first place.

2 MR. MEISNER: But right now --

3 MR. LAINAS: Nontechnical.

4 MR. MEISNER: -- the issue is no longer zirc fire. If you
5 carefully read the staff's --

6 MR. LAINAS: Yeah, that's all --

7 MR. MEISNER: -- it has nothing to do with Zirc fire.

8 MR. LAINAS: Okay.

9 MR. MEISNER: It has to do with licensing-initiated changes.

10 MR. LAINAS: Right. Yeah.

11 MR. MEISNER: And that is never going to go away until we
12 resolve it.

13 MR. LAINAS: Okay.

14 MR. ZINKE: And finally, when the regulatory backfit process
15 is not followed, which in this case we believe it wasn't, we get into
16 some unavoidable difficulties and then we really get frustrated and we
17 get long times.

18 Some of the problems that are associated with the Zirc fire
19 issue because the backfit rule hasn't been followed, one there's a
20 difficulty in even understanding what the staff position is. It's not
21 documented, it's not explicit as to what is the requirement with regard
22 to the source of the staff positions. You know, we can find information
23 in NUREGs, we can find information with regard to the generic issue and
24 its closure. There's information in the rulemaking, there's -- you
25 know, that's still pending. There's information in certain SECY letters
that deal with approval of the staff to go forward in certain
directions, but there's no explicit, this is what our position is. That
get aggravated in that what codes need to be used. And so we get into
discussions of, is this code acceptable, or is this code acceptable?

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1 Until a few weeks ago the code associated with the generic issue 82 was
2 not available to us in order to run our case so we had to pick a
3 different code.

4 We get into discussing what are the assumptions to the
5 analysis? What do they need to be? How much conservatism needs to be
6 in this assumption versus that assumption? We get into acceptance
7 criteria, well, what acceptance criteria are we going to use that's
8 going to be acceptable? Is it going to be probabilistic? Is it going to
9 be based on temperature? Is it going to be based on time? Are we going
10 to deal with the generic acceptance criteria of 17 months, or does each
11 time going to need to be plant specific?

12 None of these are written down, resolved which then just
13 creates a lot of back and forth, and all of this comes from that as an
14 issue. We didn't follow the backfit process. We didn't follow it even
15 to the point to say, is this an issue that ought to be implemented?
16 Because if we had followed that process then there ought to be explicit
17 directions so we would know what to be doing right now.

18 I'm going to turn the rest of the presentation back over to
19 Mike.

20 MR. MEISNER: Just a few more comments following up what
21 George was saying.

22 [Slide shown.]

23 MR. MEISNER: First of all, I sense some confusion on the
24 part of the panel and we went through the same confusion about why is
25 the staff imposing this anyway? I mean, you had generic issue 82, it
 was analyzed in backfit space. There wasn't sufficient safety concern
 to require a new imposition of requirements, why are we in this
ANN position? And here's the closest I can figure out, and this is what a
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ASS couple of the NRC staff have told me. I don't know that this is the

1 case because you're going to look hard and long to find anything written
2 at all on this issue even the staff position that we have to do the
3 analysis, but this is what I'm told.

4 When you look at an operating plant and you look at that
5 with respect to a Zirc fire, I'm not really that concerned about a Zirc
6 fire because even if I don't address the Zirc fire, there are still
7 off-site planning requirements that are in place. Now, that's different
8 from a decommissioning plant.

9 In fact, that's exactly what the exemption is that we're
10 requesting to eliminate off-site planning requirements. So, therefore,
11 there's something substantively different between an operating plant and
12 a decommissioning plant. But when we now look at generic issue 82, the
13 analyses that were done and the issues that were addressed, we find that
14 in fact when they did the zirc fire analysis it didn't assume off-site
15 emergency response. In other words, it didn't analyze the operating
16 case, it analyzed the shutdown case. So that generic issue 82 is as
17 applicable to the decommissioning plant as an operating plant.

18 So as best I can reconstruct, anyway, the staff --

19 CHAIRMAN ZWOLINSKI: I haven't read the --

20 MR. MEISNER: -- has an erroneous assumption here.

21 CHAIRMAN ZWOLINSKI: I haven't read that, the NUREG and
22 maybe we need to read the NUREG.

23 MR. MEISNER: Okay.

24 CHAIRMAN ZWOLINSKI: But for clarification, are you saying
25 that on your fair reading that if there is this horrific event of a Zirc
fire, that there would not be Part 100 ramifications?

MR. MEISNER: No, not at all. I'm taking the NRC's backfit
ANN evaluation of the event which is radiologically consequential just like
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ASS many beyond design basis events and that's what this is. This isn't

1 part of anybody's license basis. You can postulate many of these events
2 and we do it all the time in PRA space, go to core damage or something
3 else, I mean, it's different in this case, but that do have significant
4 radiological consequences and you assess risks. And risk is probability
5 times consequences. And you make judgments as to whether or not these
6 events are of importance. And the staff has had longstanding criteria
7 as to what the thresholds are and break points are for these in doing
8 backfit evaluations. And this event evaluates out in the generic issue
9 as a ten to the minus six event. Which is the basis for concluding that
10 no additional requirements are necessary for any plant, be it operating
11 or shutdown for spent fuel pool safety.

12 I'm not saying it's inconsequential, I'm saying that the --
13 somewhere you have to draw the line, do I need to be concerned about the
14 meteor strike through the spent fuel pool? You know, where's the break
15 point? And the staff has already established that and did it very well
16 in the generic issue resolution.

17 The other thing I'd like to mention and I think George
18 really touched on it, as I told you, we analyzed this event. We have
19 been trying to get from the staff the sharp code since last August and
20 for the life of me I still can't figure out why we can't have it.
21 Although I understand it was just released a few days ago.

22 We wanted a tool that the staff had some degree of buy into
23 to do this analysis this ourselves. Failing to get that tool from the
24 staff, we then went out and contracted with a very reputable analytic
25 company, ScienTech which NRC uses all the time, too. We used the track
code to do this evaluation for us. Probably the simplest application
you could have in track, a very simple, straightforward natural
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circulation error analysis. They did that and that's the results that
George presented earlier were mid-January where we could not exceed the

1 staff's criteria and temperature in the fuel.

2 The pain we went through though, in doing this, we
3 eventually submitted it to the staff and the staff, I have to grant, was
4 considerate and after some discussion saying, okay, well, we'll sit down
5 with you and we'll look at your analysis, and we did that, what, a month
6 ago, six weeks ago, and we had a meeting and presented our analysis and
7 results. We're now in either the second or the third wave of requests
8 for additional information. And we are bogged in a quagmire like you
9 wouldn't believe. The staff has absolutely no criteria on which to base
10 an analysis like this. It's a beyond design basis event which if you've
11 done probabilistic risk analysis, you know, you always do a realistic
12 best estimate approach.

13 It's not license basis, but I think the staff is having a
14 hard time shifting gears from their license basis analysis review to a
15 realistic review. And in the process, now we have some draft questions
16 pending, draft questions that really do imply that the contractor that
17 we have doing this job was not up to snuff. These are individuals who
18 are well known in the track industry as experts in employing that code.
19 And this is the kind of feedback that we're getting. It's to the point
20 where it's nice that the staff offered to go and look at our analysis,
21 but if you don't follow the right process like George said, if you don't
22 establish, first of all, that it needs to be an event worthy of
23 consideration and second of all what your review criteria are, you're
24 never going to get there.

25 And I guess at this point I don't have any real confidence
in any time under a year the staff will review our analysis and reach a
positive conclusion. But, again, that's my personal opinion. So, when
you step outside of the process, even as much as you'd like to band-aid
it or remedy it and take unusual situations, it's very difficult to make

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1 it work. But Maine Yankee has taken just about every step we can since
2 shortly after we shut down to deal with this issue one way or another,
3 and it's been very frustrating as I'm sure you can tell from the way I
4 speak, a very frustrating experience for us.

5 Let's go on to the backfit denial itself. And I would like
6 to establish first what some of our understandings and expectations are
7 as we talk through the issues. And as we started out at the beginning
8 with the presumption that the backfit rule does apply in this case, and
9 I think we're beyond that. Our reading of the backfit staff guidance is
10 that upon a denial the staff is required to provide other bases for
11 denial in the denial letter. So our presumption is that from here on
12 out the staff will not be coming up with new reasons or opinions as to
13 why this is not a backfit and then what we're dealing with and admitting
14 today is the entire universe of staff basis for denial of our backfit
15 request.

16 MR. LAINAS: I guess we will look at your appeal.

17 MR. MEISNER: Pardon me?

18 MR. LAINAS: Look at your appeal and see if that influences,
19 you know, what the original decision is based on.W

20 MR. MEISNER: Well, in our appeal and in our meeting today
21 we're directly addressing the basis for denial.

22 MR. LAINAS: Right. Right.

23 MR. MEISNER: And we believe it's only fair that from here
24 on out the staff can't come up with new bases, or else I think we need
25 to have another meeting like this.

Well, I'll point out the staff guidance on backfit requires
that all of the basis for denial be in the letter that was sent to us.

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RIL And one other thing and I'm not --
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ASS CHAIRMAN ZWOLINSKI: Just so we're clear, Mike, the panel

1 certainly may choose to want to get into this NUREG, get into some of
2 the other -- the Trojan docket, the Rancho Seco, things of that sort
3 trying to garner as best knowledge as we can. And we have been reading
4 some of the background on this, as I said in the beginning. We probably
5 have not read everything we should and understand everything which means
6 we may have to go back to the staff to give a better rendering of what
7 was meant here.

8 MR. MEISNER: Okay.

9 CHAIRMAN ZWOLINSKI: But that's in the context of us
10 assuring we have kind of -- we're playing with as much information as
11 possible.

12 MR. MEISNER: Okay.

13 CHAIRMAN ZWOLINSKI: And that's why I'm asking to please
14 give us as much information as you can on the topic today just to allow
15 us to have a full deck, so to speak.

16 MR. MEISNER: Okay. Sure. And with that being said, I hope
17 I at least tried to make clear that the issues today, the issues on
18 appeal have nothing to do with Zirc fire. I believe the only issue is
19 the basis for staff denial is can licensees initiate activities on their
20 own that are protected under the backfit rule. The staff has made no
21 showing that there is a technical issue here. They've essentially agree
22 that it's a new staff position and the only issue is can licensees
23 initiate changes and be protected with the backfit rule.

24 The last point I wanted to make here is -- and we've
25 included this in our letter, we have ongoing reviews on the emergency
plan exemptions and on the insurance exemptions. NRC guidance is such
that while we're in this backfit process and appeal process as well,
that those reviews can't be held up. And once those reviews are done,
the exemption should be issued whether this panel has completed its

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1 deliberations or not. And I'd just like to read from manual chapter
2 0514 which states that -- and I can leave out a few words that are
3 inapplicable, but that the "licensing action shall not be delayed by NRC
4 actions during the staff's evaluation and backfit transmittal process or
5 subsequent appeals process which is what we are in now. And I would
6 like to come back to that at the end of my discussion.

7 [Slide shown.]

8 MR. MEISNER: Okay. So I probably said it too much already,
9 our reading of the NRC basis for denial of the backfit request is that
10 Maine Yankee has not valid expectation of protection under the backfit
11 rule because it's the licensee, not the NRC that's requesting the
12 exemption. And similar to that, that in the area of exemptions NRC
13 action is discretionary.

14 Now, I'll point out these next three items on here are
15 addressed in the denial letter and they note that there's a rational
16 basis for the new requirement that the staff is choosing to impose and
17 there's a reasonable nexus between that requirement and the exemption
18 request and that the staff believes this analysis is necessary, but in
19 our view those things really have nothing to do with the basis for
20 denial. And as I'll talk a little bit later, are really a way to create
21 new pseudo backfit criteria in situations where the staff believes that
22 backfit doesn't apply. But the staff can't use these criteria, the fact
23 that there's a rational basis for the new requirement to obviate or work
24 around the backfit rule. So in that sense they did not seem to be a
25 basis for denial in and of themselves, but rather an explanation of what
happens after the denial occurs, and an explanation of what can be
imposed after the denial occurs.

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The first major point that I'd like to address is this
notion that we don't have a valid expectation protected by the backfit

1 rule or licensee-initiated changes. And I'm sure you've all read our
2 submittal and I won't belabor points on this, but essentially what the
3 staff is saying is that there's a directionality here associated with
4 regulation that in one case regulations apply, if it's something that
5 the NRC initiates or imposes on the licensee but if a licensee were to
6 take a step allowed under the regulations on their own initiative, then
7 for some reason that's hard to understand licensees are not protected by
8 the backfit rule.

9 We believe that there's no evidence in the backfit rule
10 statement of considerations and many of the very long discussions on
11 backfit back in the late '80s that would support that conclusion at all.
12 And I want to point out here some of the dangers that we get into with
13 this kind of position. Clearly the denial basis applies to all
14 licensee-initiated changes. The only criterion is that the licensee
15 initiate it. Yet, first of all, it's inconsistent with the NRC's own
16 positions in manual chapter 0514 because that manual chapter very
17 distinctly addresses licensee-initiated changes such as tech spec
18 changes, for instance, and notes that those are protected under the
19 backfit rule.

20 Now, the practical effect of this new position is very wide
21 reaching and is going to lead to some significant regulatory process
22 disruption. Let me go back to the improved tech spec program. When we
23 implemented that program for Grand Gulf it took about four months of
24 intense discussion and negotiation with the staff involving literally
25 thousands of questions on the staff's part. And there were literally
hundreds of times where it was necessary of our part to say, no, no,
this is a new staff position. We've already had a very hard fought
battle over what the improved tech specs are to say. You cannot impose
this at this point, it's against the rules, and in those cases we

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1 prevailed in every case. Our only protection, push come to shove, was
2 that backfit rule, new staff positions.

3 Putting in place this new interpretation of where backfit
4 rule applies, I believe firmly that there isn't one licensee in the
5 United States that would proceed forward now with the improved tech spec
6 program. Because as soon as they put forward their suggested new tech
7 specs, every change there is free game.

8 And we know that when we -- even right after all the
9 agreements were struck and a few plants started to initiate this, we
10 knew that there were any number of staff members, primarily review
11 staff, who had disagreements with what was within and without the
12 improved tech specs and did everything they could to try to get the old
13 requirements added back in. That's going to happen.

14 If a licensee has no protection under backfit to implement
15 the improved tech spec program then it's fair game. Your tech specs
16 won't come out looking anything like the improved tech specs are. That
17 applies across the board.

18 As changes under 50.59 not unlike George mentioned on the
19 IEEE rulemaking, a licensee makes a change under 50.59 under their own
20 initiative, suddenly somehow there are new staff requirements, the
21 residential inspector can come over and say, hey, I understand you want
22 to make this change, I think you need to do this, this, and this. Or
23 NRC can push through rulemakings like in the IEEE standard and somehow
24 you've got to keep track of these rulemakings that only apply when
25 you're making a change under 50.59 in the area of rulemaking. It would
be chaos, a very difficult situation. And we also know, I think, that
many licensees make changes not because there is so much elective as
ANN they improve safety at their plant, and they often do that under 50.59
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ASS or that's their impetus for going in for a tech spec change. So it's

1 not just like licensees are trying to get out from under something, but
2 it doesn't matter. In any case the NRC can apply with this position any
3 changes and new criteria that they wish to on an licensee-initiated
4 change.

5 [Slide shown.]

6 MR. MEISNER: The notion that the NRC determination is
7 discretionary, while I said here it's not discretionary that that really
8 is incorrect. We recognize that the NRC has discretion in the area of
9 exemptions, but we also recognize that a supported exemption should not
10 -- approval of which should not be unreasonably withheld. And we think
11 that's the case in this situation. If you go back to the statements of
12 consideration on the decommissioning rulemaking in 10CFR50.82, it's
13 clearly stated, and we've quoted it in our response that the rulemaking
14 changes for decommissioning plans are incomplete.

15 While 50.82 is a great change on the part of the NRC, it
16 really helped out the industry a lot. It was explicitly recognized that
17 it was incomplete and it was explicitly recognized that it was
18 incomplete in the area of emergency planning. And there is also a clear
19 statement in there that because of these incomplete rulemakings that
20 licensees will still need to get exemptions approved.

21 So while clearly the NRC has discretion in approving
22 exemptions, I think the record also shows that there was an expectation
23 that licensees would have to get exemptions to proceed in
24 decommissioning because the rules were not all complete yet.

25 So I think there's an expectation and an appropriate one on
the part of the licensee to have those exemptions approved and approved
consistent with their prior license basis.

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MR. MEISNER: The staff says that our request is not

1 voluntary. I mean, it is voluntary. And this is an important issue for
2 all decommissioning plants. There are internal conflicts in the
3 regulations because emergency planning and security plan and other
4 things haven't been updated for decommissioning plants. I'll give you a
5 couple of examples.

6 In a few months, I think late September, early October,
7 we're supposed to conduct a biennial exercise under the regulations.
8 And the regulations read such that we have to do that exercise involving
9 our principal functional areas of emergency response. We haven't gotten
10 approval to drop the offside emergency response. We have to conduct an
11 exercise with NRC, FEMA, and everyone else that somehow gets us through
12 a general emergency. We can't exceed 250 millirem today in our design
13 basis event in decommissioning. That can't get us above an alert level.

14 So we're faced with doing an artificial exercise that's
15 completely unrealistic with adverse training consequences for folks or
16 being noncompliant with the regulation. Now, you know, FEMA is not
17 ready for this. They haven't proposed any budget for it this year,
18 they're not planning -- doing any planning for participation in any
19 exercise and this is solely reliant on the NRC granting relief in the
20 emergency planning area to avoid going through this pretty useless and
21 costless exercise.

22 The more major problem in our mind is that regulations for
23 decommissioning plants require that decommissioning cost be bounded.
24 Okay. We can't exceed certain costs and still be compliant with the
25 regulations.

And you all know, I think, that the biggest cost in
decommissioning is personnel. And the thing that sets our personnel
ANN levels at decommissioning plants is almost solely regulatory
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ASS requirements and really the programmatic requirements. Emergency

1 planning, security plan, QA program, the degree to which you downgrade
2 or declassify your previously safety-related components and do the same
3 thing with your procedure, surveillance activities, tech specs, and the
4 like. That's setting our staffing levels without exemptions to the
5 regulations. And I'm not limiting it here just to emergency planning.
6 It covers those other ones too, particularly security.

7 We can't meet the regulations. We're in some sense in
8 noncompliance, conceptually today, because we don't have these
9 approvals. We're going to exceed what the NRC considers to be an
10 acceptable cost level for decommissioning absent these exemptions. And
11 it's hard for me to understand how in that case the staff could even
12 come close to considering that these requests we're making are
13 voluntary.

14 [Slide shown.]

15 MR. MEISNER: I'll be honest that the statement that irks me
16 the most in this denial is this idea that, hey, Maine Yankee, you can
17 just retain your emergency plan as is. If someone in the industry told
18 me that, I would say that was a very irresponsible position.

19 Like I said earlier, we can't remain compliant with our cost
20 goals, we certainly can't remain compliant with our fiduciary
21 responsibilities to the people that are paying this decommissioning ad
22 infinitum, the rate payers and the owners, and it's something that no
23 utility person in his right mind would consider doing.

24 We have to step out, we have to start decommissioning these
25 plants, and we shouldn't be shackled by unnecessary regulatory
restraints that don't add any safety benefit to the process. And I
think taking a position that we can simply sit still and do nothing is
perhaps irresponsible on the part of the NRC as well.

[Slide shown.]

1 MR. MEISNER: I'm not going to spend any time on this
2 because this is going longer than I thought, but as I mentioned up front
3 then the staff has through the denial letter posited new criteria for
4 situations where the backfit rule doesn't apply and is now creating ad
5 hoc secondary backfit criteria for what it's okay for the staff to
6 impose on us. I think they really have no relevance to the issue we're
7 here to talk about today and I'd just caution against proliferating
8 criteria under different situations and difficulties in following and
9 applying those criteria.

10 So in summary, we believe the staff denial ignores
11 precedents. We don't think the staff has rested on precedent at all in
12 this case. If anything they change it with every new plant that comes
13 up. And they surely don't rely on the resolution of the generic issue
14 on spent fuel pool safety. New ad hoc backfit criteria, it clearly
15 reverses the generic issue results with no analysis to back it up and,
16 you know, overall it puts us in the situation where the underlying
17 purposes of rules are subject to change without any notice, comment, or
18 analysis. And, in other words, in the area of licensee-initiated
19 changes, they're subject to any new staff condition that any staff
20 member cares to impose on that change. And this is really an untenable
21 position for the industry as a whole as well.

22 [Slide shown.]

23 MR. MEISNER: Let me finish up here with some thoughts.

24 CHAIRMAN ZWOLINSKI: Can I go back to your summary slide?

25 MR. MEISNER: Sure.

CHAIRMAN ZWOLINSKI: The staff denial ignores precedents.

Are you familiar with the Trojan exemption?

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MR. MEISNER: Well, only to a certain degree. Emergency
planning?

1 CHAIRMAN ZWOLINSKI: Right. I thought I had heard that
2 somehow the staff had Zircoid fire in that somehow and then somehow I
3 think seismic got involved or --

4 MR. MEISNER: Yeah, let me address that, George.
5 Specifically for the E plan exemption, the Trojan approval was
6 consistent with the resolution of the generic issue which concluded that
7 there's not sufficiently high probability for this event to be
8 considered further. And it was based on probability that the exemption
9 was approved. There was no analysis of how long do you have to go
10 following shut down or decay the be low enough to reach a certain
11 temperature.

12 CHAIRMAN ZWOLINSKI: So in the staff ignored precedents, if
13 there was a precedent, it seems like the most recent case that the staff
14 processed -- and I think the timeline indicates it was Trojan,
15 apparently there's a difference or a significant change between the two
16 reviews?

17 MR. MEISNER: It wasn't --

18 CHAIRMAN ZWOLINSKI: I don't meant to put words in your
19 mouth, but I want to understand.

20 MR. MEISNER: Yeah, let me just find it, John, but I thought
21 Yankee Rowe was --

22 CHAIRMAN ZWOLINSKI: And whatever the criteria were that the
23 staff used and how the safety evaluation -- things it said, whatever, I
24 have not reviewed the --

25 MR. MEISNER: Okay.

CHAIRMAN ZWOLINSKI: But I heard George say, and you guys
can speak for yourself, I heard that Zirc fire somehow was involved, but
ultimately it seemed to be a seismic concern?

MR. MEISNER: Well, Zirc fire, the initiating event, the

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1 postulated initiating event for Zirc fire is a seismic event. It's a
2 catastrophic seismic event that busts your spent fuel pool wide open and
3 instantaneously drains all the coolant.

4 CHAIRMAN ZWOLINSKI: Okay.

5 MR. MEISNER: So, therefore, to get there you need to
6 consider the probability of such an event.

7 CHAIRMAN ZWOLINSKI: So it ignores precedent, the staff did
8 not apply the way it reviewed Trojan to the way it's reviewing you?

9 MR. MEISNER: That's right. That's right.

10 CHAIRMAN ZWOLINSKI: It still has Zirc fire.

11 MR. ZINKE: Zirc fire is an issue.

12 MR. MEISNER: It never got to Zirc fire because it said you
13 can't have the seismic event.

14 CHAIRMAN ZWOLINSKI: Okay.

15 MR. MEISNER: You only get to Zirc fire after you drain the
16 pool. So if you don't drain the pool, you don't have a Zirc fire.

17 CHAIRMAN ZWOLINSKI: But we'll be able to review it. But it
18 just seems as if maybe they started with Zirc fire and the licensee
19 ultimately was able to show that's not a credible event because their
20 design of their pool or the probability of a seismic event or --

21 MR. MEISNER: Okay.

22 CHAIRMAN ZWOLINSKI: -- ultimately now becomes not credible
23 to postulate, thus the Zirc fire goes away. But they may have started
24 with the review being Zirc fire as the design or the criteria.

25 MR. MEISNER: Yeah, that could very well be. I know we
discussed that briefly back in the fall with the staff, and it was clear
that they weren't interested in looking at seismic probabilities.

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CHAIRMAN ZWOLINSKI: Okay. I'm just focusing on staff
denies -- denial ignores precedents and I'm going back to Trojan and not

1 having that in front of us, that has the potential to have precedents?

2 MR. MEISNER: Yeah, you can call that the precedent, John,
3 but my intent for putting that down was the percent was the generic
4 issue resolution. It wasn't the individual approvals as the years went
5 on. The only purpose for which we put that up was to show the staff
6 hasn't maintained a position anywhere. And most of them are
7 inconsistent with the generic issue resolution.

8 MR. CONGEL: Including that one.

9 MR. MEISNER: Including that one.

10 MR. CONGEL: Including Trojan?

11 MR. MEISNER: Yes, they --

12 MR. CONGEL: Oh, okay. Because I heard you --

13 MR. MEISNER: -- that in my mind is a clear backfit. I'm
14 not trying to compare us to Trojan and say the staff should have applied
15 the same criteria to us as they did with Trojan because applying it to
16 Trojan is a backfit.

17 MR. CONGEL: Okay. Because I thought you said earlier that
18 in accordance with generic issue 82, Trojan was approved because of the
19 low probability. And that's not the case. I believe that they looked
20 at it as an individual case starting with the Zirc fire as John is
21 saying an then had a method by which it was possible to argue that
22 pathway and the conclusions regarding the needed EP away?

23 MR. MEISNER: That's right. I was simply trying to draw a
24 parallel that the generic issue was resolved based on low probability.

25 MR. CONGEL: Okay.

MR. MEISNER: And so was, ultimately, Trojan.

CHAIRMAN ZWOLINSKI: So I was just trying to -- I was trying
ANN to follow each one of your summary points and I wanted to make sure I
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ASS was understanding it.

1 MR. MEISNER: Okay.

2 CHAIRMAN ZWOLINSKI: If you want to move on, go ahead.

3 [Slide shown.]

4 MR. MEISNER: Okay. Well, just a few more points to make,
5 and these are requests to the appeal panel itself.

6 We would ask that in this case with the ongoing emergency
7 plan exemption reviews and for the insurance exemption that rather than
8 wait the outcome of this panel deliberations that staff guidance is to
9 -- since we're in the backfit process, to timely proceed with those
10 reviews and issue the exemptions. And I understand that we're very
11 close to the end on those. And one of the reasons why we put in the
12 backfit request to begin with was to short circuit a long, long review
13 time. So given that the staff guidance is to issue those things
14 forgetting the pending issue, we think it appropriate that the panel
15 direct the staff to immediately issue those exemption approvals.

16 Our second request I talked about a little bit --

17 MR. LAINAS: Before coming to a conclusion --

18 MR. MEISNER: Pardon me?

19 MR. LAINAS: Before coming to a conclusion as to whether
20 this is a backfit or not?

21 MR. MEISNER: Yes, and let me reread the staff guidance on
22 that from manual chapter 0154 -- 0514. It says that licensing action
23 which is what we're going through now, the emergency plan exemption
24 requests, shall not be delayed by NRC actions during the staffs'
25 evaluation and backfit transmittal process or a subsequent appeals
process which is what we're in now.

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The intent is that you carve out the issue in dispute, in
this case the Zirc fire, and proceed with the remainder of the licensing
action. And that's what we're asking the staff to do to simply, in this

1 case, comply with staff guidance on their backfit process. And we're
2 asking furthermore that we'd like --

3 MR. LAINAS: You've got to be a little bit more careful --
4 right now, all right, the staff is continuing with its review of the
5 issue on its merits --

6 MR. MEISNER: Independent of Zirc fire.

7 MR. LAINAS: -- as you requested earlier --

8 MR. MEISNER: Right. And we're simply asking that those
9 approvals be issued independent of deliberations, sir. I assume the
10 panel isn't going to turn around a decision overnight. And we --

11 MR. LAINAS: Not overnight. Okay.

12 MR. MEISNER: -- would not want the panel's review to hold
13 up the issuance of the approvals.

14 CHAIRMAN ZWOLINSKI: I think we consider the panel's
15 activity to be holistically independent. We do owe the office director
16 a view and an opinion of this matter, but I'm under the impression the
17 staff is continuing to work day-by-day on both of these.

18 I'm not aware of any direction to hold up that activity at
19 all.

20 MR. MEISNER: We did include that in our letter request, the
21 appeal letter. And we addressed it to Mr. Calhan and asked that that --
22 that the staff be directed to do that. So I am simply reiterating that
23 request here. And we ask as part of your deliberations, like I
24 mentioned up front, that you disallow any new reasons why this is not a
25 backfit that those things should have been included in the backfit
denial letter if they were appropriate. And we ask that you determine
in this case that backfit in fact does exist.

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And furthermore, that in this case the backfit evaluation
was really done some years ago and was as a part of generic issue 82

1 resolution.

2 And finally, in going back to the context I tried to lay out
3 for this, I'm not sure this appropriate to request of the panel, but we
4 feel that backfit in general is not something staff considers routinely
5 or even exceptionally. And we think the staff has to follow the rules
6 just as much as the licensee does. And I'm not sure that at least the
7 spirits of the rules are being followed in this case, and you know, I'd
8 be happy to go into more detail about examples and things, but I think
9 on their face it's clear that if nothing else, the staff does not
10 consider new positions or does not address new positions as backfit
11 before they issue them and I suspect really doesn't think about it.

12 But I ask for your help in that respect and it might be
13 worthwhile to take a look as to how the backfit rule is implemented
14 within the NRC and on a generic basis, not just associated with Maine
15 Yankee's request and draw your own conclusions. But in any case I do
16 think it worthwhile for the panel, just as a spot check, call in a few
17 PMs, call in a some reviewers and ask them how many backfits they've
18 identified in the last year and see what the result is. And that's all
19 I have. And I appreciate your time and attention.

20 MR. LAINAS: I guess we're going to hear something from NEI,
21 I guess.

22 CHAIRMAN ZWOLINSKI: Yes.

23 MR. LAINAS: But I think the panel is set to look at what's
24 been going on with respect to Maine Yankee. As far as generically is
25 concerned, I wonder if NEI -- maybe they'll tell us whether NEI is
approaching this, you know, generically with the NRC -- the generic
aspects of this issue.

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MR. MEISNER: We can get into that, but I think it's
something worthwhile to consider. You are the first appeals panel in

1 six years, you know. I mean, that means something.

2 MR. LAINAS: Maybe.

3 MR. MEISNER: And you're the first people that are in some
4 position to maybe draw some conclusions that go beyond an narrowly
5 constructed backfit.

6 MR. LAINAS: I wonder how many backfit requests have been
7 made by industry during those six years?

8 MR. MEISNER: Yeah, not very many. Like I said, the
9 industry is apathetic. Once you make one, it doesn't get anywhere.

10 MR. LAINAS: That's right.

11 CHAIRMAN ZWOLINSKI: I would like to read, just so the
12 record is straight, you are tasked, speaking to the panel members with
13 recommending to the director, NRR, whether or not the criteria being
14 used by the staff in evaluating a Maine Yankee request for relief from
15 off-site emergency preparedness requirements of 10CFR50.54q costs due to
16 backfit, that was the envelope or the box that we were asked to assess.
17 Some, if not a fair amount of your presentation goes beyond this
18 particular directive. And what the panel will probably do in a
19 different session will probably discuss do we want to render a view or
20 observation or opinion. But I think we have in our charter, a specific
21 direction that we must fulfill and I think your request is, go beyond
22 your charter to render an observation or view.

23 MR. MEISNER: That's right.

24 CHAIRMAN ZWOLINSKI: Would that be a reasonable
25 interpretation of your request?

MR. MEISNER: Yes.

CHAIRMAN ZWOLINSKI: Do you have any more questions of the
ANN licensee?

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MR. CONGEL: No.

1 MR. LAINAS: No.

2 MR. MEISNER: I think at this point, did you want to say
3 something, Don?

4 CHAIRMAN ZWOLINSKI: Well, if you all are essentially done,
5 I don't think we have anymore questions of your folks. I'd like to move
6 on and afford others an opportunity to speak. And, thank you for your
7 very detailed presentation.

8 MR. MEISNER: Thank you.

9 CHAIRMAN ZWOLINSKI: I must say, just speaking for myself, I
10 will need to read the transcript to really let some of this sink in, and
11 there are other documents. And I think all of us are taking our role
12 fairly -- quite seriously. So, you've given us a lot of information and
13 to digest all of that over a few days is not going to be easy. But we
14 are trying to work in a rather short timeframe.

15 MR. MEISNER: And I don't doubt that you're going to give
16 this good consideration and due consideration. And I hope you
17 understand on our part, this is not a contentious issue, but a heartfelt
18 issue. And it's something that is really making a difference for Maine
19 Yankee and making a difference in an area that is not safety significant
20 at all. Thank you.

21 CHAIRMAN ZWOLINSKI: Thank you.

22 MR. DAVIS: Don Davis from Connecticut Yankee and Yankee
23 Connecticut. I just had a few comments. I think Mike and George did a
24 superb job at going through lots of details in history and I just wanted
25 to make a couple of points. In fact, I would also try to go beyond your
charter, as you read it, to include Connecticut Yankee in that same
issue in that essentially everything that Mike said applies to

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Connecticut Yankee and maybe even with some extra little twists that you
ought to consider. Also, I think that this a good forum, not only just

1 because of the management contention that you're going to bring to it,
2 but I suspect there's going to be others in the NRC management that
3 will, you know, be interested in what was occurring today and so I would
4 make a plea beyond just the backfit issue of some more management
5 engagement in reviewing what's going on in decommissioning, and this is
6 a good example of areas where I think whether it's backfit or just the
7 NRC exercising its management responsibility that needs some focus as it
8 pertains to decommissioning plants.

9 First I'd like to say that specific to CY, Connecticut
10 Yankee, it was shut down around five months earlier than Maine Yankee
11 and most of the licensing actions submittals were, you know, submitted
12 therefore somewhat before that plant and we're essentially in the same
13 position as Maine Yankee waiting for staff review. I think that it's
14 important to look at the safety significance of this issue.

15 As you brought up, John, you know, I think all of the
16 utilities out there, certainly Mike and I are very interested in dealing
17 with safety issues. And I think we need to look at the safety
18 significance of issues like this. As far as I can see, and I should
19 tell you that Connecticut Yankee did a similar calculation to Maine
20 Yankee to calculate if there was a potential for Zirc fires, and if so,
21 when it occurred. We used a different consultant and a different
22 computer code and concluded in a -- I'd say, a consistent manner with
23 Maine Yankee, that the potential did not exist or certainly does not now
24 exist at Connecticut Yankee.

25 And so here we have really three independent calculations,
one by the staff, one by ScienTech for Maine Yankee, one by FullTech for
Connecticut Yankee all concluding that there really isn't a potential
for a zirc fire at these facilities. And yet we're still sitting there
basically with the requirement for full scope emergency planning, we're

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1 sitting there paying insurance, costs that hit us at \$3 to 500,000 a
2 month. And the only thing outstanding is staff review of our
3 submittals.

4 In fact, I understand the staff consultant review and our
5 submittal is essentially, you know, concluded that it looks reasonable.
6 I think we have the same problem that Maine does as to what level of
7 conservatism do we put on this calculation because there's no, you know,
8 ground rules. No standard review plan, no precedent in the regulations
9 for, you know, what should be the right level of conservatism for a
10 situation like this. So here we are, if you will, as far as I know,
11 nobody indicating that there's a safety concern out there and yet the
12 licensing actions aren't being, you know, processed. And we are, you
13 know, it's basically spending a lot of money and decommissioned plants
14 are in a different position than an operating plant when it comes to
15 pending funds. We have a trust fund. We have a limited amount of money
16 available to decommission that facility. And we have a joint, I think,
17 desire to do this decommissioning and finish it up in the best job we
18 can and, you know, I'm sure we can go get more money from the rate
19 payers or from some source if we have to. But it's a much more painful
20 process than for an operating plant or for a plant that's producing, you
21 know, income if you will.

22 So I think that needs some consideration. I think it's an
23 objective that the NRC has indicated concerned themselves, inadequate
24 funding for decommissioning. And I think that as a result some more
25 attention and priority to deal with the inconsistencies in the
regulations that require us to ask for license amendments and exemptions
would be prudent. So I would command more from that perspective.

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ASS I think that as we deal with the lack of safety significance
of this particular scenario, besides being very remote, all of the

1 analysis that I'm aware of shows that it's not even a potential. It
2 seems to go, again, counter to the Commission's philosophy of
3 risk-informed decisionmaking. You know, the risk seems to very, very
4 small if it exists at all. And, you know, I think that whether it's
5 this panel or staff management in general, you know, I think some focus
6 on that would be helpful or us.

7 I think I support everything that Mike and George said about
8 the backfit in general and I think that I would also emphasize the
9 position that Mike had indicated and certainly I share is that the most
10 important thing for both of the plants is to deal with the licensing
11 actions so we can stop paying for insurance that we don't need.

12 And, you know, the aspects of whether 51.09 apply in
13 backfitting would be useful, I think, for the whole industry to deal
14 with. But for both of our plants, the first priority, if you can help
15 put some more management emphasis on it, is to deal with the licensing
16 action because we continue to have to pay for this, we continue to
17 basically be sending very difficult messages to the local communities as
18 we go out there and communicate to them that we're, you know, going to
19 be eliminating off-site planning, we don't need the sirens, and we
20 explained why, and yet, you know, we don't have the licensing actions to
21 support that.

22 So, you know, it sends a very confusing message to the
23 public in a decommissioning environment also.

24 So I would just add, you know, those additional comments to
25 what Mike and George have said.

CHAIRMAN ZWOLINSKI: Are you making an assertion that the
agency, in my words, is very heavily focused as far as the operating
reactor the ongoing safety of the operating reactors and hasn't applied
the appropriate overall management attention throughout the agency to --

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1 MR. DAVIS: Decommission plans?

2 CHAIRMAN ZWOLINSKI: -- in so many -- more of a newer area,
3 or --

4 MR. DAVIS: I would agree with that. In fact, I've made
5 this point to Sam Collins in formal settings that I think that it's very
6 much like, you know, when I was at the staff some 20 years ago or more,
7 and we were shifting from licensing plants to operating plants and we
8 needed to develop a separate technical staff to deal with those kinds of
9 issues and the licensing issues, the fact that there were different
10 standards and different levels of safety issues to consider. And I
11 think that same thing happens with decommissioning. We get almost the
12 worst of both worlds. We get like low priority and no attention, you
13 know, in terms of the issues we need to deal with. And, frankly, there
14 are very few issues that we need to deal with. I mean, you know,
15 there's like a handful of licensing actions.

16 I should tell you now the plant has been shut down for two
17 years, our chemists are still taking -- because the tech specs require
18 them to, because we still have our full power -- many of our full power
19 tech specs still taking chemistry samples of our reactor coolant system
20 and have to do, quote, "engineering analysis" if they're out of specs
21 even though we're getting prepared to inject, you know, chemicals to
22 decontaminate it. And I should say until maybe recently, in the last
23 few days, we still have those tech specs.

24 I'm not sure we're in transition, but, you know, that just
25 doesn't make sense for a system that you plan to chop up and bury to,
you know, do chemical sampling on it. And it's those kinds of things,
it would be very simple for the staff to approve license amendments in
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ASS those areas. And, in fact, they're really generic, I mean, any plant
that goes into decommissioning, boom, you know, the kinds of licensing

1 actions we need are all the same. And I think a cookbook could be
2 prepared very quickly and those things could be issued -- should be
3 issued very -- in fact, I'm going to advocate to the industry that they
4 try to do mode 7, you know, so that they're not stuck like we are with a
5 year or more waiting for licensing actions or two years just, you know,
6 at this stage. Get mode 7 for decommissioning and save yourself a whole
7 lot of money and aggravation.

8 CHAIRMAN ZWOLINSKI: I don't want to minimize the
9 significance of decommissioning facilities, but I think I've heard you
10 and Mr. Meisner essentially say in so many words, once you have entered
11 the phase called decommissioning, your view is the staff should be able
12 to act almost immediately to grant relief in areas such as EP, security,
13 et cetera?

14 MR. DAVIS: Well, within standard acceptance criteria that
15 we can preestablish. I think that's true. I mean, you know, there are
16 some issues that require some time to deal with, but many of them can be
17 pre-established, I think.

18 CHAIRMAN ZWOLINSKI: But timeliness of licensing action
19 processing, overall management attention in the area, maybe the two
20 really go hand in glove.

21 MR. DAVIS: Right. And I understand the staff's position --
22 I mean, difficulty in that, you know, operating reactor issues there
23 have a lot more safety significance potentially and they need, you know,
24 staff priority treatment. But, you know, there needs to be some balance
25 here because we are in a situation where we're working with effectively
a fixed pot of money to finish off, you know, the tail end of a plant
slide, and in fact, the risk levels are significantly different than
operating reactors. And I think that, you know, the staff needs to
consider that in the way they approach the issues.

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1 CHAIRMAN ZWOLINSKI: Thank you, Don. Mike --

2 MR. LAINAS: Just real quickly. You could have claimed --
3 you haven't claimed a backfit?

4 MR. DAVIS: Well, I will informally add CY to the pot
5 because the issues are exactly the same, except that we're, you know,
6 four or five months, you know, earlier in the process but the technical
7 issues are identical. And, you know, I think Mike is -- has said it
8 right in that, you know, we don't see any industry issues here because I
9 think the industry is not convinced that this will ultimately go
10 anywhere. But I think independent again, of whether it's a 5109 issue
11 in a legalistic sense, there's a management responsibility that the
12 staff has to look at issues like this.

13 MR. LAINAS: How close are you to resolution of this?

14 MR. DAVIS: Pardon me?

15 MR. LAINAS: How close are you to resolution?

16 MR. DAVIS: On this issue?

17 MR. LAINAS: Yeah, do you know?

18 MR. DAVIS: You know, I don't know. You know, I think it's
19 fairly close if I take the informal feedback from the staff's
20 consultant. You know, they seem relatively satisfied, but I have no
21 idea of what it's going to take in terms of going through the staff
22 management. I don't know that anybody because it's the first time. I
23 mean, nobody has reviewed one of these calculations before. The NRC
24 staff has it, so it's precedent. How do either of us know since it's
25 the first time? And the raw definition of a backfit is when you're the
only one that's ever gone through it. You know, I think it has to be a
defective backfit because we -- none of us have any precedent.

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CHAIRMAN ZWOLINSKI: Okay. Thank you. Mike.

MR. MEISNER: Just real quickly before we -- there are only

1 a handful of things that licensees need to kick off a very successful
2 decommissioning. We need approval for the fuel handlers' requirements,
3 you know, you convert licensed operators to fuel handlers, they need
4 approval of their defuel tech specs, emergency plan, and security plan,
5 and then some lesser things like insurance. But those four major ones
6 there's absolutely no reason why that can't be a cookbook, project
7 manager review and approval without having to go to the review branches.
8 In fact, they should be because every plant is the same in the
9 decommissioning.

10 Instead, though, we get into the situations that we're
11 battling here where everything is unique, even though they've done it on
12 five other plants in the past, the instant issue is always unique that a
13 new reviewer comes up with new requirements or pseudo requirements and
14 when you couple that with the fact of very little review time these
15 days, Maine Yankee submitted its emergency plan in November of last
16 year, I'm not sure we had more than one day of review time and we got
17 the reviewer here, he can tell us, until May, June?

18 MR. DAVIS: And just to reiterate --

19 MR. MEISNER: On that order, the same thing with security.
20 We submitted a security plan shortly thereafter. We didn't get more
21 than a couple of days of security reviewer time until June.

22 MR. DAVIS: And just to support Mike, it's the same thing.
23 I had to call up Sy, you know, four or five months ago because Kenyon at
24 Millstone is calling me and saying, you know, I need to take your
25 resources for emergency planning to let the Millstone plant restart. I
mean, you know, given the priorities and the consequences, sure, I'll
step behind. But, I mean, that's crazy. You know, I mean, in reality
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to have to make decisions like that from a resource perspective. When
you look at the risk significance of what we're talking about, it just

1 doesn't make any sense.

2 MR. MEISNER: And what happens then is Don and I get on the
3 phone and we call it Sy-wise. We call Mike and ask him -- we call Jack
4 Rowe and we eventually work our way up to Sam Collins and sometimes Joe
5 Cowan, and we irritate the hell out of everybody.

6 MR. DAVIS: Well, Mike does a much better job than I do.

7 [Laughter.]

8 MR. MEISNER: Thank you. I'll take that as a compliment.
9 And you do that enough and it's a very difficult situation to retain
10 relationships. But at the same time that's our job. We can't be
11 spending \$300,000 a month in this.

12 MR. DAVIS: So I would say, I think that's, you know, while
13 this isn't your specific charter, I would like to use this forum to
14 bring up these other issues that I think you could help us out with a
15 lot. I'm sure just airing them will help it out.

16 MR. LAINAS: How long has this stuff been --

17 MR. DAVIS: Which stuff?

18 MR. LAINAS: Well, the issue --

19 MR. WEBB: November '97. That's for Maine.

20 [Simultaneous conversation.]

21 MR. MEISNER: I think John submitted in April of '97.

22 MR. DAVIS: Yeah, so, now we're just talking about 14 months
23 or 18 -- I mean, you know, a long time.

24 CHAIRMAN ZWOLINSKI: Any more questions for Mr. Davis?

25 [No response.]

CHAIRMAN ZWOLINSKI: Okay. Thank you.

MR. BEEDLE: My name is Ralph Beedle and what I would like
ANN to do is add a little bit of a kind of a generic perspective to this.
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ASS You have a licensee under Part 50 who submits a request for an exemption

1 to embark on some new venture in the operation of this facility and as a
2 result of that exemption request the staff says we'd be glad to grant
3 that exemption if you will do this little project. Now, that's what
4 we're talking about today is that little project. Is that a backfit
5 imposed on the licensee in the process of trying to achieve some
6 exemptions? And in this case it's the Zircooid fire analysis for the
7 plant and the exemption requests as associated with the E plan as he
8 embarks on a decommissioning mode for his facility.

9 I see five generic issues in this process. One is the
10 applicability of the backfit rule to the decommissioned mode plant.
11 Second is regulatory basis for modifying licensing basis, backfit
12 applicability to licensee-initiated requests, backfit applicability to a
13 discretionary action in decommissioning, and third is backfit -- or the
14 fifth is backfit criteria.

15 Okay. Now, these issue arise not from the request for
16 exemption or the request that the utility take some action in order to
17 satisfy the reviewers granting that exemption, but from the rationale
18 that comes from the staff in the process of addressing the utility's
19 plea that the imposed requirement is a backfit. So it comes from the
20 thought processes that the staff has developed here and I think those
21 are very important because they set the precedent for future actions on
22 the part of the staff. If we're successful in a condition that says
23 that the licensee-initiated requests and things that fall from that
24 initiated request by a licensee are not subject to backfit, that has
25 significant ramifications throughout the rest of the industry,
particularly for the licensees that are going through decommissioning.
But it also has implication for other licensees as well.

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So in the first, the decommissioning plant really should be
afforded the protection in the backfit rule. There is no indication in

1 the voluminous rulemaking records for the backfit rule, 51.09, guidance
2 for the backfit it NUREG 1409 or CRGR procedures to indicate that the
3 Commission had any intent to remove Part 50 licensees from the backfit
4 protection simply because they were going through decommissioning.
5 There is nothing that we read in any of those documents that would
6 suggest that there is a change in the applicability of backfit rule and
7 protection as the licensee goes through that phase of operation.

8 They are still Part 50 licensees and I would argue that if
9 we eliminate the backfit rule, just arbitrarily, then maybe we could
10 eliminate a lot of other rules under Part 50 license requirements simply
11 because we went into the licensing mode called decommissioning. And I
12 don't think that the staff would find that acceptable either. I mean, I
13 think that goes without saying. But that's what the staff has said in
14 the case of the backfit rule.

15 CHAIRMAN ZWOLINSKI: Your point being Part 50 is Part 50
16 until --

17 MR. BEEDLE: You grant an exemption of take the license
18 away.

19 And Part 50.109 is part of the Part 50 licensing. Or at
20 least the last time I looked it was. And what we've got here in the
21 case of Maine Yankee is the staff has said, Maine Yankee because you're
22 in a decommissioning mode, 109 doesn't apply to you.

23 Okay. The second issue, it appears that the staff is
24 attempting to impose a new accident sequence in this case, the Zirc fire
25 as a basis for the emergency plan requirements at Maine Yankee and
others.

It's tantamount to using the exemption request that the
licensee wants to have approved its attempt to have him change his
licensing basis in order to grant that request. And there is certainly

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1 a desire on the plant's part to get that exemption. So he's willing to
2 accede to the staff's requirement or request to go conduct one of these
3 analyses.

4 In fact, that desire is so strong that Maine Yankee embarked
5 on the analysis before the staff ever made a formal request that they do
6 that in response to the exemption request. And we see that happening
7 every day in the utility world. It's the licensee's desire to move
8 forward in this direction and the staff says, and the staff -- when I
9 say "staff" I'm talking from the residential inspector all the way
10 through call Shirley Jackson. They want this -- if you want this then
11 you need to take this course of action and the licensees in general
12 agree that if they're going to be successful, then they need to succeed
13 to the license or to the regulator's desire to take some particular
14 course of action, a study, modification, whatever. And very few
15 utilities tend to balk at the imposition of those requirements. And
16 then the question is, why don't the utilities balk at that? Because
17 they fear that if they don't then they've agreed in their SALP that they
18 are reluctant, they're recalcitrant, they are not agreeable, they do
19 things that we don't like and therefore we drop that SALP, you know.
20 We'd like to see you use your simulator to run emergency plan drills.
21 We want you to simulate. There's no requirement to do that. But there
22 are some reasons where if the utility doesn't use a simulator to run his
23 E Plan drills, you read about that, that the utility isn't using all
24 available, the utility isn't using new technology, the utility doesn't
25 have realism in simulating the emergency plan. So that means just one
of the examples of places where you feel the pressure to go do above and
beyond requirements because a particular staff member wants that done.

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RIL So that's what we got in the case of this pressure that goes on that
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& really constitutes backfit.
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1 CHAIRMAN ZWOLINSKI: Your broader assertion takes from Mr.
2 Davis' comment of the old licensing transition to operating reactor. In
3 order to get a license utilities seemingly would accept almost anything.
4 I want to get on plant operating.

5 MR. BEEDLE: Right.

6 CHAIRMAN ZWOLINSKI: Now that the licensees are operating,
7 in order to amend the license they'll acquiesce to positions that maybe
8 they don't fully ascribe or had intended to ascribe, but to garner
9 acceptance or approval from the staff to have the amendment issued,
10 they're accepting a priori essentially maybe a backfit and actually
11 adopting that. And now I have precedent, the industry has accepted that
12 precedent, the next licensee may be required to essentially adopt the
13 same precedent. So the staff is essentially backfit.

14 MR. BEEDLE: Absolutely. Absolutely.

15 CHAIRMAN ZWOLINSKI: If I'm reading the operator venue and
16 then the transition over to decommissioning?

17 MR. BEEDLE: Right.

18 CHAIRMAN ZWOLINSKI: Okay.

19 MR. BEEDLE: Very well -- stated much better than I did.
20 Thank you.

21 I think this is a particularly problematic issue in the case
22 at Maine Yankee and Connecticut Yankee on this Zirc fire issue. Here we
23 have a plant that's being asked to either validate or justify or
24 determine whether or not this particular event is something that ought
25 to be incorporated into the design of the decommissioning plant or maybe
even backfitted into the design of an operating plant. This is an issue
that's been with us since 1989. And why we are in 1998 causing this
plant to delay in executing a reasonable program of reduction in an E
Plan to resolve an issue that the Agency has had on the table for some

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1 period of time, just does not make a lot of sense to me. It's almost as
2 though Maine Yankee is being held hostage to resolve some technical
3 concern on the part of a staff member or several staff members. And I
4 think that ought to be a concern to the agency as a whole.

5 MR. LAINAS: It's also a question on Connecticut Yankee;
6 right?

7 MR. BEEDLE: Yeah, I use Maine Yankee kind of as the generic
8 kind of a sense. I want to talk to you -- I don't want to get in
9 between the point and the conditions that Mike is making. I want to try
10 and deal with it in a broader, generic issue all the way. We need to
11 refer to him on occasion, so he's my generic poster.

12 MR. MEISNER: Thank you.

13 MR. BEEDLE: You're welcome.

14 Third, the staff claimed that the licensee submitted this
15 exemption request and is not entitled to backfit protection because it
16 was licensee-initiated. I really find that somewhat incredible that
17 when the licensee request for an exemption and the staff says, we'll
18 grant you this exemption if you embark on this program that that -- the
19 fact that the licensee requested some exemption means that this program
20 that the staff wants to impose isn't subject to backfit just doesn't
21 make a lot of sense to me. That means that every licensee that ever
22 submits an exemption is subject to innumerable modifications to his
23 license without the protection of backfit. That's exactly what it
24 means. Whatever the issue, no matter how significant or insignificant
25 it is, the licensee is going to have to do it regardless of what the
licensee feels is the significance of it.

I just find that that's totally inconsistent with the intent
of the Commissioners when they put the backfit rule in place. And it
was the very thing for which the backfit rule was issued.

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1 Four, Maine Yankee in response to the challenge on the
2 backfit issue, Maine Yankee was told that the exemption request was a
3 discretionary issue and that, you know, therefore, this backfit claim
4 shouldn't be considered, that if you ask for an exemption that this --
5 that the staff has the discretion to grant the exemption, we don't doubt
6 that. That's clear. In the case of the decommissioned plant and the
7 decommissioning rule, the things like the E Plan and security plan were
8 clearly recognized as things that would require exemption. I think
9 exemptions were encouraged in the decommissioning rule and it was a
10 matter of the decommissioning rule didn't get around to dealing with
11 those particular issues. So I think there was a clear understanding as
12 you embark on this phase of plant operations understand Part 50 that you
13 would request exemptions to Part 50 in order to allow you to continue
14 the decommissioning process.

15 So this discretionary character that's been applied to a
16 decommissioning plant's exemption process, I think is inappropriate. I
17 think it's almost a necessary condition in order to execute the
18 decommissioning process.

19 Now, the fifth point is the criteria. We're using this
20 particular response to the Maine Yankee appeal to establish new criteria
21 for backfit. In other words, if I ask for an exemption, if I can
22 somehow logically tie this request for additional information to or
23 program to the exemption request, if there's some logical link then I
24 shouldn't have to worry about backfit on the part of the staff. That's
25 the kind of criteria that's being established in the Maine Yankee case.
And I think that's inappropriate. I think the backfit rule has
criteria. That should be the criteria. We shouldn't be inventing new
criteria. If we do, we ought to change the backfit rule and put that in
there, not do it through individual case situations.

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1 So, now the observation, and I made it earlier, is that
2 we've got a Zirc fire that's been on the table since 1989, we're now
3 holding this plant hostage while we try and resolve that issue. I just
4 -- I think that's inappropriate. I think there's got to be a better way
5 for the agency to resolve technical issues rather than hold an
6 individual plant at risk. And "at risk" is money. It's costing this
7 plant a lot of money to continue to maintain the E plan, security plan
8 and so forth as it goes through that decommissioning process. As he
9 pointed out there is limited amount of money in that trust fund, every
10 dollar he spends needlessly means it's another dollar he can't employ
11 for cleanup or dollars that he can't use in other places that might be
12 more appropriate.

13 CHAIRMAN ZWOLINSKI: Is your point that the agency should
14 get on with completion of rulemaking such that the industry has a well
15 understood set of criteria basis expectation of the staff,
16 predictability of the regulator?

17 MR. BEEDLE: I think that the --

18 CHAIRMAN ZWOLINSKI: Because I think your issue is not so
19 much this particular licensee, as the generic base.

20 MR. BEEDLE: Right.

21 CHAIRMAN ZWOLINSKI: And I think you're saying, do something
22 generic so that this doesn't recur?

23 MR. BEEDLE: Correct. It's becoming clear with the Maine
24 Yankee case that the application of the exemption process in the
25 decommissioning plant phase is not as clear as we had expected it would
be. We had thought that the exemption from E Plan requirements and
security requirements and so forth would be relatively clean, that we
wouldn't have other things tacked on there so it was -- you know, I
don't we ever really concerned ourselves with having a change in 109 in

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1 order to make those things more clearly defined, although maybe that's
2 what we need to do. I think the staff could do that tough.

3 CHAIRMAN ZWOLINSKI: I guess my point was more into 50.82
4 and into decommissioning itself. It --

5 MR. BEEDLE: Well, yeah.

6 CHAIRMAN ZWOLINSKI: -- that earlier there were some holes
7 in the rule --

8 MR. BEEDLE: Yeah.

9 CHAIRMAN ZWOLINSKI: -- fill it all up, make it a whole
10 rule.

11 MR. BEEDLE: Yeah. I said "109", but I meant 82 the, yeah,
12 yeah.

13 CHAIRMAN ZWOLINSKI: Okay.

14 MR. BEEDLE: In the case of 109, if we want to change
15 backfit rule criteria, then we ought to change 109 and not do it through
16 this process -- this process of trying to deal with an exemption for
17 Maine Yankee.

18 So with that, I do appreciate the opportunity to raise some
19 generic issues. I recognize your charter is to deal specifically with
20 Maine Yankee, but I think that what you have today is an opportunity to
21 look at -- while you're focused on Maine Yankee, you have an opportunity
22 to look at the broader issue and maybe it will be another six years
23 before we come back with some backfit rules if you can figure out how to
24 convey the right message to the senior members of the staff there. So,
25 thank you very much.

CHAIRMAN ZWOLINSKI: Thank you.

MR. BEEDLE: I would add one other thing. I had asked some
folks at NEI to prepare some detailed comments. I would like to provide
these to you if I may, and give you -- it gives you some of our thought

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1 processes in examining the record and the regulations on the issues that
2 we just talked about.

3 CHAIRMAN ZWOLINSKI: Would you have any problem with those
4 being appended to the minutes of this meeting?

5 MR. BEEDLE: Not at all. Not at all.

6 CHAIRMAN ZWOLINSKI: So we'll attach it to transcription.
7 Thank you.

8 MR. BEEDLE: Thank you.

9 CHAIRMAN ZWOLINSKI: Are there any other members of the
10 public that would like to speak?

11 MR. PIETRANGELO: I've got a couple little things beyond
12 what Ralph said.

13 CHAIRMAN ZWOLINSKI: Please --

14 MR. PIETRANGELO: Until everybody's bladder bursts, I can
15 get them in.

16 CHAIRMAN ZWOLINSKI: Please identify yourself.

17 MR. PIETRANGELO: Tony Pietrangelo from NEI.

18 These are in addition to what Ralph said and what's in the
19 paper he just handed you. I'm the director of licensing at NEI and have
20 a lot of day-to-day interaction with our members dealing with licensing
21 issues and submittals to the staff in terms of discretionary acts and
22 voluntary activities and such. Mike mentioned before, there's some
23 reluctance to apply the backfit appeal process and that licensees may be
24 apathetic about that. And I think that's right based on my interactions
25 with our members also. But I think part of the reason though is that
there's a perception that went -- and I think this happens when a
backfit claim is made it tends to polarize the licensee from the agency,
ANN from the people you have to interact with. Typically what happens is
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ASS the lawyers dig in on each side trying to make the case and I think it's

1 an interaction that most licensees really don't want to have with the
2 NRC. You want to maintain good relations with your project manager and
3 the other people you have to deal with in the agency. Just the backfit
4 claim in and of itself is not healthy to that relationship long term and
5 I think that's partially the reason for people not exercising the
6 processes as Maine Yankee has today and I commend Mike and George for
7 doing this. I think they're trying to do it in a very constructive way
8 and not in a contentious way. And my point is it doesn't have to be
9 contentious and I think the conduct of this hearing proves that out.

10 The second point I wanted to make is that there's been a
11 perception that the purpose of the backfit rule is to protect licensees
12 from the staff running amok. And I don't think that's in the statement
13 of considerations that supported the promulgation of the backfit rule.
14 And I think what it boils down to is that that rule is really there to
15 assure that resources, both agency and licensee resources are applied
16 commensurate with the safety benefit.

17 It's not in anyone's interest for a licensee to go off and
18 have to spend a lot of resources and the agency to review those actions
19 associated with that if it doesn't result in a commensurate benefit with
20 safety. That's the purpose of the backfit rule and that is a public
21 health and safety issue. So this is not just an economic issue for
22 decommissioning plants. And I would argue today that this is even a
23 bigger issue for the operating plants today.

24 In Maine Yankee's case it's not a safety issue because there
25 is no real risk significance in a decommissioned plant, in particular,
for the stage that they're at in their decommissioning. When the same
thing happens at an operating plant and I think as Mike said before, the
real issue here isn't Zirc fires, it's that a voluntary licensee action
is being claimed that the reason that the backfit rule doesn't apply.

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1 But when an operating plant goes in and needs some action from the NRC,
2 it has to go through this kind of thing. It does have a greater impact
3 on safety as well as costs. So I would argue, because of that, this is
4 a bigger issue for operating plants than it is for decommissioning
5 plants.

6 Finally, this panel has an opportunity to make this a more
7 normalized process by your decision. And I'm glad it's being
8 transcribed and that's the reason we're here today is to, again, support
9 our members, but also try to make this generic point that this isn't
10 just about decommissioned plants. This is about public health and
11 safety and if the proper application of this rule will support increased
12 public health and safety. And I would argue, even protect the NRC more
13 than the licensee itself. And when claims are made about some safety
14 concerns that really don't have risk significance, yet we go through
15 these exercises, that's not in the interest of public health and safety.
16 And when the NRC can demonstrate that the backfit criteria are not met
17 in a very transparent publicly observable way, that's to the agency's
18 credit. And those are the only points I wanted to make in addition to
19 what Ralph said.

20 CHAIRMAN ZWOLINSKI: Any questions?

21 [No response.]

22 MR. PIETRANGELO: Thank you.

23 CHAIRMAN ZWOLINSKI: Thank you very much.

24 Are there any others?

25 [No response.]

CHAIRMAN ZWOLINSKI: Well, I thank all of you for your
attendance and as I said in the opening remarks, this panel has been
charged to take all the facts as best we can corral them and grow to
understand those, and make a recommendation to our office director.

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1 I'll bring the meeting to a close and thank everyone for
2 their time.

3 [Whereupon, at 3:25 p.m., the meeting was concluded.]
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